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ABSTRACT

Past research has demonstrated the negative effects of leading questions by attorneys on eyewitness testimony and has found that adversary lawyers produced less accurate testimony from eyewitnesses. This study was conducted to examine the effects of lawyer's hostile versus non-hostile behavior and lawyer's leading versus non-leading questions on simulated jury impressions. The script of a negligence case was drafted and videotapes were made for each of four conditions which varied by lawyer hostility and use of leading questions. College students (N=89) viewed one of the tapes and acted as jurors in the trial. Subjects rated impressions of the defendant's lawyer and of the expert witness, indicated a verdict, and gave a decision about the size of the award, if applicable. The combination of both hostile style and leading question tactics produced a more negative effectiveness rating than did either tactic alone. The results support the view that a powerful style produces a more favorable impression of a defense attorney than does a less powerful style. The approach involving both hostile affect and leading questions, however, was responded to negatively and seen as reducing the lawyer's perceived effectiveness, as was a non-hostile non-leading question style. (NB)

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# The effect of cross-examination tactics on simulated jury impressions

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Presented at EPA Annual Meeting, March 1987, in Alexandria, Virginia

Title of Paper: The effect of cross-examination tactics on simulated jury impressions.

Topical Session Preference: Social: Social Psychology; Person: Perception.

Problem or Major Purpose: The present experiment was an investigation of the effects of two variables (lawyer's hostile vs. non-hostile behavior and lawyer's leading vs. non-leading questions) in a simulated jury case.

Subjects: Eighty-nine male and female Introductory Psychology students participated in this study.

Procedure: The script of a negligence case, based on an actual court trial, was drafted. The case involved a woman who had been trapped in a hotel elevator for several hours. She claimed that her current symptoms of agoraphobia and claustrophobia are a result of her elevator accident and was suing the hotel and the elevator company for psychological damages. The case was presented to pilot subjects in written form to ensure comparable believability for defense and prosecution.

A separate group of pilot subjects was presented with two sets of videotaped statements made by five male candidates. In the first set, candidates acted the part of a lawyer by reciting a standard script of several lines. Pilot subjects rated the candidates on their degree of attractiveness, convincingness, and lawyer-like qualities. In the second set, candidates read a standard script portraying a psychologist. Pilot subjects rated the candidates on their degree of psychologist-like qualities. Ratings were tallied, and those

candidates who received equivalent ratings in the first set were selected as the two attorneys. One was given the role of the plaintiff's attorney, and the other was assigned the part of the defense lawyer. The candidate who was rated the highest in the second set was selected as the psychologist expert witness.

A videotape was made for each of the four conditions (i.e., leading questions - non-hostile style; non-leading questions - non-hostile style; leading questions - hostile style; and non-leading questions - hostile style). The script included the opening statements of both attorneys and cross-examination of the expert witness by the defense attorney for the parties being sued. The opening statements were standard across all four conditions, while the cross-examination varied according to condition. The hostile style was characterized by angry voice inflection and pronounced hand gesturing. The non-hostile style was associated with unemotional speech and few gestures. The wording did not vary for the hostile - non-hostile condition. Although the content of the case remained the same in the leading and non-leading questions conditions, the wording varied.

It was predicted that leading questions would result in negative impressions of the lawyer and would reduce the lawyer's perceived effectiveness as compared with non-leading styles. Similarly, a hostile attorney would be rated as less effective than a non-hostile attorney. Finally, the most negative impression of the lawyer should be in the hostile leading style condition.

Groups of subjects viewed the videotaped trials. Each group

watched one of the four conditions. Subjects were instructed to act as though they were jurors in the case presented. Following the videotape, subjects rated impressions of the defendant's lawyer and the expert witness in terms of how convincing and effective they were, using a 7-point semantic differential type scale. Subjects also indicated a verdict of guilty or not guilty, and a decision about the size of the award, if applicable.

Results

A 2 x 2 (Hostile vs. Non-hostile Lawyer Style (H) by Leading vs. Non-leading Questions (L)) MANOVA was performed on two dependent variables (Convincing and Effectiveness) measuring subjects' impressions of the defense attorney who represented the companies being sued by the plaintiff. The MANOVA Wilks' Lambda F tests of the two effects yielded P levels of .09. Both H and L main effects were not significant. The interaction H x L, however, was significant ($F(1,88)=4.04$, $p=.048$). The MANOVA test was followed by two ANOVAs (one per dependent variable). A significant H x L interaction was obtained for Effective ($F(1,88)=4.98$, $p=.03$) but not for Convincing ($F(1,88)=1.85$, $p=.18$). The means for the four conditions revealed that the Hostile Leading Questions ($M=4.04$) and the Non-hostile Non-leading Questions ($M=4.24$) conditions were less effective and convincing than the Hostile Non-leading ($M=3.32$) and Non-hostile Leading ($M=3.43$) conditions. Lower mean values represented more positive ratings of Convincing and Effectiveness.

A MANOVA was performed on subjects' ratings of the defense lawyer's use of leading questions and an ANOVA was performed on ratings of

the hostile nature of the lawyer's style. Neither analysis produced significant results. Subjects' ratings of liking of the defense attorney, however, were positively correlated with Convincing ($r(87)=.238$, $p=.025$) and Effective ($r(87)=.22$, $p=.025$) measures.

No statistical analyses were performed on the number of guilty and not guilty judgments because of the overwhelming number of not guilty verdicts.

Implications and Conclusions

The present experiment confirmed the hypothesis that a defense attorney who adopts a cross-examination tactic characterized by the use of hostile leading questions would be less effective and convincing than an attorney using alternative tactics. The combination of both hostile style and leading question tactics produced a more negative effectiveness rating than either tactic by itself.

The finding that a hostile style did not considerably reduce the effectiveness of a defense attorney is consistent with the findings of Sigal, Baden, Hayden and Mosley (1985) who demonstrated that both assertive and aggressive lawyers were more effective than passive lawyers. Apparently simulated jurors perceive defense attorneys' vigorous attacks during cross-examination of an opposing witness, even with a hostile aspect to the attack, to be acceptable in defense of a client. Saks and Hastie (1978) suggested that Lind and O'Barr's (1978) conclusion that "powerful" witness styles in courtroom testimony produce more positive juror impressions of this testimony, might be extended to impressions of "powerful" attorney styles. The present

findings are consistent with this view since hostile/vigorous attacks would be considered powerful.

Research concerning the use of leading questions has focused upon eyewitness testimony rather than upon expert testimony. Sheppard and Vidmar (1980) found that "adversary lawyers" produced less accurate testimony from eyewitnesses. Similar results were obtained by Lipton (1977) who demonstrated negative effects of leading questions on eyewitness testimony. Neither the Sheppard and Vidmar (1980) nor the Lipton (1977) study provided evidence about the effect of the leading question tactic on jurors' impressions of a lawyer. The present findings suggest that the leading question style is considered role-appropriate for defense attorneys. This style may be considered as part of the "powerful" approach described by Saks and Hastie since it is controlling in the amount of information the lawyer permits the expert witness to introduce into the testimony.

The finding of a significant H x L interaction in the present experiment indicates that too attacking a style adopted by an attorney may be responded to negatively by jurors and may produce sympathy for an expert witness who is being attacked. Jurors may also become suspicious that the hostile and leading attack is preventing the jurors from hearing all the evidence from the witness that would be useful in a decision. Since liking for an attorney was also positively correlated with the perception of his effectiveness, it may be that this intense vicious attack produced negative reactions which affected the jurors' ratings of the lawyer's effectiveness.

The significant H x L interaction also revealed that a non-hostile non-leading question style was ineffective for the defense attorney. This tactic was less credible according to jurors' perception of appropriate lawyer-like behavior.

There was a disproportionately large number of not guilty judgments in the present study which precluded the possibility of differential effects of the manipulations on decisions about the case. Negligence cases, particularly, where psychological damages are involved, may appear confusing to the juror. Saks and Hastie (1978) indicated that expert psychological and psychiatric witnesses may find it difficult to clearly and logically present evidence in a negligence case, particularly when the expert witness is being aggressively cross-examined. The present results support the suggestion and indicate that appropriate tactics may have to be developed by an expert witness and his/her attorney to counteract the hostile or leading questions cross-examination styles of opposing attorneys. It is also possible that if a dramatic actual picture of the plaintiff obviously suffering mental anguish could have been introduced into the testimony, that image may have had a more positive impact on jurors and produced more guilty judgemnts. Whalen and Blanchard (1982) showed that color pictures of injuries of a child presented during a trial were more dramatic and had more impact on monetary awards than other evidence.

In conclusion, the present study supports and extends previous findings that a "powerful" style produces a more favorable impression of a defense attorney than a less powerful style. An intensely attacking

approach, however, which continues hostile affect and leading questions, is responded to negatively and is seen as reducing the lawyer's perceived effectiveness, as does a non-hostile non-leading question style.

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